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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ARB.A. 14/2016

SMS PARYAVARAN LTD. & ORS.

..... Appellants

versus

INTERGEN ENERGY LTD.

..... Respondent

AND

✓ ARB.A. 15/2016

SMS PARYAVARAN LTD. & ORS

..... Appellants

versus

INTERGEN ENERGY LTD

..... Respondent

Through: Mr Gagan Chhabra and Ms Richa Narang, Advocates for appellants.
Mr Arjun Mahajan, Mr Prashant Mehta and Ms Sneha Jain, Advocates for respondent.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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14.09.2016

IA No.11218/2016 in ARB.A. 14/2016

IA No.11219/2016 in ARB.A. 15/2016

1. Allowed, subject to all just exceptions.
2. The applications stand disposed of.

ARB.A.14/2016

ARB.A.15/2016

3. These appeals have been filed assailing a common order dated 23.08.2016 passed by the Arbitrator (hereafter 'the impugned order') under Section 17 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') whereby the Arbitrator has rejected the appellant's prayer for staying the following proceedings :-

“(a) Crl. Compl. Case No.7989/2015 bearing title M/s Intergen Energy Ltd. v. M/s SMS Paryavaran Ltd. before the Learned Court of Sh. Deepak Kumar, IInd-Metropolitan Magistrate, Dwarka, Delhi, initiated by the claimant.

(b) Crl. Compl. Case No.7990/2015 bearing title M/s Intergen Energy Ltd. v. M/s SMS Paryavaran Ltd. before the Learned Court of Shri Deepak Kumar, IInd Metropolitan Magistrate, Dwarka, Delhi, initiated by the claimant.

(c) Crl. Compl. Case No.7906/2015 bearing title M/s Intergen Energy Ltd. v. M/s SMS Paryavaran Ltd. before the Learned Court of Shri Deepak Kumar, IInd – Metroplitan Magistrate, Dwarka, Delhi, initiated by the claimant.

(d) Company Winding up Petition bearing Company Petition No.155/2015 pending before the Hon'ble Delhi High Court initiated by the claimant.

(e) Civil Suit titled “SMS Paryavaran Ltd. v. Intergen Energy” before the Civil Judge-cum-JMIC, Gurgaon District Courts.”

4. The appellant is a company and is stated to be engaged in the field of water supply and sewerage treatment plants. It is stated that the appellant was awarded two contracts by Nashik Municipal Corporation and part of the

works awarded to the appellant was sub-contracted to the respondent vide sub-contract agreement dated 12.07.2013. It is the appellant's case that its agreement with the respondent also entailed the respondent depositing a sum of ₹3.5 crores with the appellant as per its offer. Admittedly, a separate loan agreement for the said amount was also entered into between the parties.

5. Certain disputes have arisen between the parties in respect of the said two agreements and pursuant to orders dated 18.08.2015, Justice Manmohan Sarin (Retd.), former Chief Justice of the Jammu and Kashmir High Court was appointed as a Sole Arbitrator. At the material time, certain proceedings were also pending between the parties which included a suit filed by the appellant, a winding up petition filed by the respondent as well as complaints under Section 138 of the Negotiable Instruments Act, 1881. Although, the appellant withdrew the suit since the subject matter of the dispute in the suit and the arbitration proceedings was identical, the respondent has neither withdrawn the complaints filed under Section 138 of the Negotiable Instruments Act, 1881 nor the winding up petition preferred against the appellant.

6. Aggrieved by the same, the appellant preferred petitions [OMP (I) 9/2016 and OMP (I) 10/2016] under Section 9 of the Act, *inter alia*, praying as under:-

“a. stay all and every proceedings sine die emanating from Crl Compl. Case No. 7989/2015 bearing title M/s Interger Energy Ltd. V. M/s SMS Paryavaran Ltd., Crl. Compl. Case No. 7990/2015 bearing title M/s Interger Energy Ltd. V. M/s SMS Paryavaran Ltd. and Crl Compl. Case No. 7906/2015 bearing title M/s Interger Energy Ltd. V. M/s SMS Paryavaran Ltd.,

which are all presently pending adjudication before the Ld. Court of Shri Deepak Kumar - II, Metropolitan Magistrate, Dwarka, Delhi and also the Company Winding Up Petition bearing Company Petition No. 155/2015 pending before this Hon'ble Court."

7. The said petitions were disposed of by separate orders dated 02.05.2016 as the Arbitral Tribunal had already been constituted and, therefore, the appellant had an alternative efficacious remedy under Section 17 of the Act.

8. In the aforesaid circumstances, the appellant filed two applications under Section 17 of the Act which have been rejected by the impugned order.

9. The Arbitrator has rejected the applications on the ground that the nature of proceedings under Section 138 of the Negotiable Instrument Act, 1881 and the proceedings before the Company Court are different from the nature of proceedings before the Arbitrator and, therefore, the Arbitrator would not have the power under Section 17 of the Act to pass orders for staying those proceedings.

10. Clearly, the Arbitrator would not have the power to stay criminal proceedings which have been instituted by a party. Similarly, the nature of a petition for winding up of a company is different and the jurisdiction to entertain the said petition vests only with the Company Court and cannot be exercised by any other Court or Tribunal.

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11. In the given circumstances, I find no infirmity with the view taken by the Arbitrator. Accordingly, the appeals are dismissed.



VIBHU BAKHRU, J

SEPTEMBER 14, 2016
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